

IN THE CIRCUIT COURT OF IRON COUNTY, MISSOURI

ROGER MEDLEY
Contestant

v.

IRON COUNTY AND IRON COUNTY
CLERK'S OFFICE

And

JEFF BURKETT
Contestee

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) Case No. 20IR-CC00013
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FILED
8/27/2020
Sammye G. White
Circuit Clerk
Iron County, MO

JUDGMENT

Cause called on August 26, 2020 for preliminary hearing. Contestant, Roger Medley, appeared in person and with counsel, Derrick Good and Natalie Pigg. Iron County and Iron County Clerk's Office appeared by Iron County Prosecuting Attorney, Brian Parker. Contestee, Jeff Burkett, appears in person and with counsel, Gabriel Crocker. This court takes judicial notice of the entire file herein and notes all parties have been served.

Contestee's Motion to Dismiss

Prior to the presentation of evidence on Contestant's Petition to Contest Primary Election Under 115.531 RSMo., Contestee moved for dismissal based upon the claim that the petition was filed out of time in accordance with Section 115.531 RSMo. Section 115.531 RSMo. states, "[n]ot later than five days after the official announcement of the results of a primary election is issued by the election authority or secretary of state, as the case may be, any candidate desiring to contest the primary election shall file a verified petition in the office of the clerk of the circuit court of any circuit in which part of the election was held and in which any alleged irregularity

occurred....” The results of the primary election in Iron county, Missouri were officially certified and announced on Thursday, August 13, 2020 (although documentation of the certification was not offered into evidence, evidence that the results were certified and announced on August 13, 2020 was not contested). Contestant e-filed his verified petition at 5:07 PM on Thursday, August 20, 2020. Five calendar days from the August 13, 2020 official announcement of the results of the primary election would have been August 18, 2020. However, when a statute prescribes a time period of “less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.” Missouri Rule of Civil Procedure 44.01(a) Therefore, contestant had until August 20, 2020 to file his verified petition.

Contestee contends that even if Contestant had until August 20, 2020 to file his verified petition, he failed to timely file his petition on that date because it was e-filed after the end of business at 5:07 PM. However, “[e]lectronic filing is permitted at all times when the electronic filing system is available” and “[t]he filing deadline for any document filed electronically is 11:59:59 p.m. central time.” Missouri Rule of Civil Procedure 103.06 Therefore, Contestant’s verified petition is deemed filed on August 20, 2020.

Contestant’s verified petition was properly and timely filed not later than five days, excluding Saturdays and Sundays, after the official announcement of the results of August 4, 2020 primary election was issued by the Iron county election authority. Contestee’s Motion to Dismiss is overruled.

Contestant’s Cause of Action

Contestant prays for this court to order a new election in accordance with Section 115.549 RSMo. Section 115.549 RSMo., in its entirety, states

If any court trying a contested primary election determines there were irregularities of sufficient magnitude to cast doubt on the validity of the initial election, it may order a new primary election for the contested office. The order shall set the date of the election, which shall not be less than fourteen or more than thirty days after the order is issued, and shall be sent by the clerk of the court to each election authority responsible for conducting the special election. In its order, the court shall specify the name of each candidate for the office to be voted on at the special election, and the election shall be conducted and the votes counted as in other primary elections. Notice of the election shall be given in such manner as the court directs. The person receiving the highest number of votes at the special party primary election shall be his party's nominee for the contested office. The requisite number of persons receiving the highest number of votes at any other special primary election shall be the nominees for the office.

The relief sought by Contestant is a “drastic remedy” and “is appropriate where the validity of the *entire* election is under suspicion...” Board of Election Com’rs of St. Louis County v. Knipp, 784 S.W. 2d 797, 798-799 (Mo. Banc 1990)

Facts

Stephanie Lebron was the Iron County Clerk and Election Authority for Iron county from January 1, 2019 through the August 4, 2020 primary election and through the certification of the

results of the primary election on August 13, 2020. Contestant and Contestee were both candidates for the Republican nomination for Sheriff of Iron county, Missouri on the August 4, 2020 primary election ballot. The results of the primary election for Sheriff of Iron county Missouri certified by Ms. Lebron were:

Roger Medley	452
Brian R. Matthiesen	331
James E. Womble	232
Ben Starnes	441
Jeff Burkett	523

Absentee Ballot Irregularities

Absentee ballots under Missouri law were to be available to voters on June 23, 2020 for the August 4, 2020 primary election. However, Ms. Lebron made an error in the printing of the ballots and was required to have new ballots printed. Therefore, sample ballots were not posted prior to June 23, 2020 and absentee ballots in Iron county were not available to voters until approximately July 10, 2020. According to Ms. Lebron, she did not turn anyone away from voting by absentee ballot.

Absentee ballots requested by voters and ballots requested by military service members were not properly mailed out to absent voters within the timeframes required by Missouri Law. Though Ms. Lebron claims those ballots were ultimately mailed to voters, if they were mailed, they were certainly mailed late according to Missouri law.

When absentee ballots became available for walk-in voters, the practice in Ms. Lebron's office was to keep a stack of pre-initialed absentee ballots with her initials and those of Taylor

Wakefield. Ms. Lebron admitted that on occasion she would place Taylor Wakefield's initials on absentee ballots when Ms. Wakefield was not present and without Ms. Wakefield's authorization. Those pre-initialed ballots were also pre-stamped in red as "ABSENTEE."

One former employee of the Iron County Clerk's office expressed concerns over the pre-initialed and pre-stamped absentee ballots and referred to that practice as "some shady business." That former employee refused to utilize the pre-initialed and pre-stamped absentee ballots.

Absentee ballots were provided to voters with the initials of both Ms. Lebron and Ms. Wakefield even when both were not present.

Ghermanville Precinct Irregularities

Initial ballots provided to voters in the Ghermanville Precinct incorrectly allowed voters to vote on the Southern District Commissioner candidates rather than the Western District Commissioner candidates. The automatic tabulating machine provided to the Ghermanville Precinct for voters to cast their ballots was programed to accept those incorrect ballots. When the incorrect ballot issue was discovered by Ms. Lebron, correct ballots were provided to the Ghermanville Precinct sometime after 1:00 PM. However, since the automatic tabulating machine was not programmed to accept the correct ballots, those ballots were rejected by the automatic tabulating machine.

When ballots in the Ghermanville Precinct were rejected they were to be placed in the emergency slot on the automatic tabulating machine. Although it is unclear who placed the rejected ballots in the emergency slot, at least on some occasions, an election judge took possession of the ballots from voters and placed them in the emergency slot. Some voters were told to give their ballots to an election judge rather than to attempt to feed the ballot into the

automatic tabulating machine. Those ballots were presumably placed in the emergency slot even though the ballot had not been rejected by the automatic tabulating machine. Some voters gave their ballots to an election judge and did not observe their ballot being placed in the emergency slot and did not observe what ultimately happened to their ballot. A total of fifty-one ballots were ultimately placed in the emergency slot in the Ghermanville Precinct.

When voting ended, the election judges in the Ghermanville Precinct attempted to remove the ballots from the automatic tabulating machine but were unable to gain access with the key provided. The automatic tabulating machine was taken, with all ballots remaining inside, to the County Clerks office. Once at the County Clerk's office, access to the ballots was obtained and the ballots in the emergency slot were manually counted. Although it is unclear to the court, it is the court's recollection of the evidence that the election judges from the Ghermanville Precinct were not present for the counting of any of the votes from the Ghermanville Precinct.

Due to the problems at the Ghermanville Precinct, at least one election judge from that precinct refused to serve on what was referred to as the "verification committee."

All ballots provided to voters in the Ghermanville Precinct did have all candidates for Iron County Sheriff on the ballot for the voters' consideration.

Election Judge Qualification Irregularity

Ms. Lebron hired Cheryl Casteel as an election judge for the August 4, 2020 primary election in Iron county. Ms. Casteel performed duties as an election judge during the August 4, 2020 primary election. Ms. Casteel's son-in-law, Ben Starnes, was a candidate for, and was on

the ballot seeking, the Republican nomination for Iron county sheriff at the August 4, 2020 primary election when she served as election judge.

Section 115.085 RSMo. states that “[n]o person shall serve as an election judge at any polling place in which...the name of a relative within the second degree, by consanguinity or affinity, appears on the ballot.” Section 115.013(25) defines “relative within the second degree, by consanguinity or affinity” as “a spouse, parent, child, grandparent, brother, sister, grandchild, mother-in-law, father-in-law, daughter-in-law, or son-in-law.”

Accordingly, Ms. Casteel was not a qualified election judge for the August 4, 2020 primary election and should not have been allowed to serve in that capacity.

Discrepancy Between Total Votes Reported to the Missouri Secretary of State and the Total Votes Certified by the Iron County Election Authority

Sometime during the late evening of August 4, 2020 and the very early morning hours of August 5, 2020, Ms. Lebron or one of her employees reported the results of the primary election, along with the total votes cast, to the Missouri Secretary of State. The total of votes cast reported to the Missouri Secretary of State by Ms. Lebron’s office was 168 votes more than her office ultimately certified. The apparent explanation for this discrepancy is some form of human error. Nevertheless, such a large discrepancy in the reporting of the total votes cast is irregular.

Missing Automatic Tabulating Machine Tally Tape Irregularity

On election night, Ms. Lebron was unable to initially account for one of the automatic tabulating machine tally tapes which was generated by one of the automatic tabulating machines. The automatic tabulating machine tally tape was the initial unofficial tally results for votes cast

utilizing that particular automatic tabulating machine. According to Ms. Lebron, the tally tape was ultimately discovered with some election supplies and has been accounted for.

Conclusion

It is incumbent upon this court to focus on the validity of the entire election which is contested and to determine whether “there were irregularities of sufficient magnitude to cast doubt on the validity of the initial election.” Stated another way, this court must determine if the irregularities are of a sufficient magnitude such that the “validity of the *entire* election is under suspicion.”

This court finds there were multiple and substantial irregularities of sufficient magnitude to cast doubt on, and place under suspicion, the validity of the primary election in Iron county for the Republican nomination for Sheriff of Iron county, Missouri. This court further finds that, beyond substantial irregularities, the August 4, 2020 primary election was fraught with multiple errors and violations of the Missouri election laws. In their entirety, multiple and substantial irregularities, multiple errors, and multiple violations of the Missouri election laws are well beyond the magnitude sufficient to cast doubt on, and place under suspicion, the validity of the primary election in Iron county, Missouri for the Republican nomination for Sheriff of Iron county, Missouri. With full understanding that ordering a new primary election is a drastic and extraordinary remedy, this court feels compelled by the facts of this case to grant just that relief. Nothing short of a new primary election for the contested office will remove the suspicion and doubt about the validity of that election.

This court finds that while the Contestant and Contestee are the only parties to this action who were on the primary ballot on August 4, 2020, in order to ensure that the validity of the

entire primary election is zealously protected, this court feels compelled to order all of the names of the candidates who appeared on the ballot for the Republican nominee for Sheriff of Iron county, Missouri to once again appear on the new primary election ballot in the same order as was listed on the August 4, 2020 ballot. By ordering a new primary election with all of the same candidates, it is this court's intent to return the contestant and contestee to the status quo ante and nothing more. To do otherwise would most certainly give one advantage over the other.

THEREFORE, IT IS ORDERED ADJUDGED AND DECREED, that in accordance with Section 115.549 RSMo., a new primary election for the Republican nomination for the office of Sheriff of Iron county shall be held on Tuesday, September 22, 2020 and the election shall be conducted and the votes counted as in other primary elections. The names of each candidate to be voted on at the special election for the Republican nomination for the office of Sheriff of Iron county are Roger Medley, Brian R. Matthiesen, James E. Womble, Ben Starnes, and Jeff Burkett. Notice of the September 22, 2020 primary election shall be published in a local newspaper of general circulation as soon as possible by the Iron county election authority and by posting such notice on the front and rear doors of the Iron county courthouse and in such other public places as the Iron county election authority shall deem just and proper.

The Circuit Clerk of Iron county is directed to immediately file this judgment and deliver a certified copy of this judgment to the Office of the Iron County Clerk and enter a docket entry verifying that such delivery has been completed. The Circuit Clerk of Iron county is further directed to immediately deliver a stamped filed copy of this judgment to the Missouri Secretary of State by email to: chrissey.peters@sos.mo.gov and file a copy of that email in this cause.

Costs of this action taxed to Contestant.

SO ORDERED THIS 27TH DAY OF AUGUST 2020.

COURT SEAL OF



IRON COUNTY

A handwritten signature in black ink, appearing to read "Kelly Parker". The signature is written in a cursive style with a long, sweeping tail.

Kelly Parker
Circuit Judge